



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-776

CERTAIN LIGHTING CONTROL DEVICES INCLUDING DIMMER SWITCHES AND PARTS THEREOF (IV)

DECISION TO REVIEW-IN-PART AN INITIAL DETERMINATION GRANTING IN-PART COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION OF VIOLATION OF SECTION 337, AND ON REVIEW TO VACATE ALL PORTIONS OF THE INITIAL DETERMINATION RELATING TO U.S. PATENT NO. 5,248,919; REQUEST FOR SUBMISSIONS

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part an initial determination (“ID”) (Order No. 18) of the presiding administrative law judge (“ALJ”) granting in-part complainant’s motion for summary determination of violation of section 337. The Commission has determined on review to vacate all portions of his ID relating to U.S. Patent No. 5,248,919 (“the ’919 patent”) as moot due to the expiration of the patent on March 31, 2012. The Commission also requests written submissions regarding remedy, bonding, and the public interest, relating to U.S. Patent No. 5,637,930 (“the ’930 patent”).

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to

5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 15, 2011, based on a complaint filed by Lutron Electronics Co., Inc. ("Lutron") of Coopersburg, Pennsylvania. 76 *Fed. Reg.* 35015-16. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighting control devices including dimmer switches and parts thereof by reason of infringement of certain claims of the '930 and '919 patents. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents:

American Top Electric Corp. ("American Top") and Big Deal Electric Corp. ("Big Deal"), both of Santa Ana, California; Zhejiang Lux Electric Co. Ltd. ("Zhejiang Lux"), Zhejiang Yuelong Mechanical and Electrical Co. ("Zhejiang Yuelong"), and Wenzhou Huir Electric Science & Technology Co. Ltd. ("Wenzhou Huir"), all of Zhejiang, China; Westgate Manufacturing, Inc. ("Westgate") of Vernon, California; Elemental LED, LLC ("Elemental") and Diode LED ("Diode") both of Emeryville, California; Pass & Seymour, Inc. ("Pass & Seymour") of Syracuse, New York; and AH Lighting of Los Angeles, California.

On September 9, 2011, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 9) granting Lutron's motion to amend the complaint and notice of

investigation to substitute Elemental d/b/a Diode LED (“Elemental”) as a respondent in place of Elemental and Diode. On November 22, 2011 and February 27, 2012, respectively, the Commission issued notices of its determinations not to review the ALJ’s IDs (Order Nos. 10 and 15) terminating Pass & Seymour and AH Lighting from the investigation based on consent orders.

On December 12, 2011, the ALJ issued an ID (Order No. 11) finding Elemental in default under Commission rule 210.16(b)(3) based on its own election. On January 17, 2012, the Commission issued notice of its determination to review the ID, and on review to find Elemental in default under Commission rules 210.16(a)(2), (b)(2). Also, on January 17, 2012, Westgate filed a notice electing to default. On March 5, 2012, the ALJ issued an ID (Order No. 17) finding Westgate in default under Commission rules 210.16(a)(2), (b)(2). In the same ID, the ALJ found respondents Big Deal, American Top, Wenzhou Huir, Zhejiang Yuelong, and Zhejiang Lux in default under Commission rule 210.16 for failing to respond to the complaint and notice of investigation, and for failing to respond to his show cause order issued on February 8, 2012 (Order No. 14). On March 21, 2012, the Commission issued notice of its determination not to review his ID finding these six respondents in default.

On January 20, 2012, Lutron filed a motion for summary determination of violation of section 337 pursuant to Commission rule 210.16(c)(2) and requested entry of a general exclusion order with respect to the '930 patent. Lutron also requested entry of a limited exclusion order with respect to the '919 patent directed against the accused products of all defaulting respondents. Lutron further requested cease and desist orders with respect to both asserted

patents against all defaulting respondents, except for Westgate. The Commission investigative attorney ("IA") filed a response supporting much of the motion.

The ALJ issued the subject ID on June 7, 2012, granting in-part the motion for summary determination. The ALJ found that all defaulting respondents met the importation requirement and that complainant satisfied the domestic industry requirement. *See* 19 U.S.C. § 1337(a)(1)(B), (a)(2). He found that each of the defaulting respondents' accused products infringe one or more of the asserted claims of the '930 patent, except for one accused product with respect to claim 178. He found that the defaulting respondents infringe the asserted claims of the '919 patent in accordance with Commission rule 210.16(c). The ID also contained the ALJ's recommended determination on remedy and bonding. Specifically, the ALJ did not recommend issuance of a general exclusion order with respect to the '930 patent, and recommended issuance of a limited exclusion order with respect to all defaulting respondents for the asserted claims of both asserted patents. Also, he recommended cease and desist orders directed against respondents Big Deal, American Top, and Elemental with respect to the asserted claims of both asserted patents. The ALJ further recommended that the Commission set a bond of 100 percent of the entered value of the covered products during the period of Presidential review. No petitions for review of the subject ID were filed.

Having examined the record of this investigation, including the ALJ's ID, the Commission has determined to review-in-part the ID. The '919 patent expired on March 31, 2012, which terminated the Commission's jurisdiction as to this patent. *See* 19 U.S.C. § 1337(a)(1)(B)(i). The Commission has therefore determined on review to vacate all portions of the ALJ's ID relating to the '919 patent as moot including his finding of a violation of section

337 with respect to the '919 patent based on infringement. The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See*

Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the '930 patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on August 2, 2012. Reply submissions must be filed no later than the close of business on August 9, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number ("Inv. No. 337-TA-776") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*).

Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46 and 210.50).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: July 19, 2012

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